UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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TRAVEL SENTRY, INC.,

Plaintiff,

v.

DAVID A. TROPP,

Defendant.

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Hon. Eric Vitaliano, U.S.DJ.
Hon. Roanne 1. Mann, U.S.MJ

Civil Action No. 1 :06-cv-06415

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT DAVID A. TROPP'S CROSS-MOTION FOR SUMMARY JUDGMENT ON INFRINGEMENT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. FACTS 2

III. SUMMARY JUDGMENT STANDARD 4

IV. ARGUMENT 5

   A. The Patents 5

   B. The Travel Sentry License Agreements 11

   C. The MOU 14

   D. The New Divided Infringement Test 16

V. CONCLUSION 25

TABLE OF AUTHORITIES

Page(s)

Cases

Akamai Tech., Inc. v. Limelight,
692 F.3d 1301 (Fed. Cir. 2012) 1, 18

Akamai Tech., Inc. v. Limelight Networks, Inc.,
797 F.3d 1020 (Fed. Cir. Aug. 13, 2015) (en banc) .... *passim*

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986) 4

Estate of Antonio v. Pedersen,
Index No. 5:11.cv-41, 2012 WL 6163190 (D. Vt. Dec. 11, 2012) 20, 21, 23

BMC, Inc. v. Paymentech,
498 F.3d 1373 (Fed. Cir. 2007) 1, 2, 16

Celotex Corp. v. Catrett,
477 U.S. 317 (1986) 4

Eli Lilly and Co. v. Teva Parenteral Medicines, Inc.,
2015 WL 5032324, __ F. Supp. 3d __ (Aug. 25, 2015) 17, 18, 19

Geneva Pharm. Tech. Corp. v. Barr Labs Inc.,
386 F.3d 485 (2d Cir. 2004) 21

Gilbert v. Gardner,
480 F.3d 140 (2d Cir. 2007) 5, 6, 7

Golden Hour Data Systems, Inc. v. EMS Charts, Inc,
614 F.3d 1367 (Fed. Cir. 2010) 2

Gottlieb v. Cnty. of Orange,
84 F.3d 511 (2d Cir. 1996) 5

Limelight Networks, Inc. v, Akamai Tech., Inc.,
134 S. Ct. 2111 (2014) 1, 2, 18, 19

Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,
475 U.S. 574 (1986) 4

Metro-Goldwyn-Mayer Studios, Inc. v. Groukstar, Ltd.,
545 U.S. 913 (2005) 16

Muniauction, Inc. v. Thompson Corp.,
532 F.3d 1318 (Fed. Cir. 2008) 1, 2

Travel Sentry v. Tropp,
497 F. App'x 958 (Fed. Cir. Nov. 5, 2012) 1

Statutes

35 U.S.C.A. § 271(a) 2, 16

Other Authorities

The Economist 24

Fed. R. Civ. P. 56 4

Fed. R. Civ. P. 56(e)(2) 4

Restatement Second of Torts 20

I. INTRODUCTION

Plaintiff Travel Sentry, Inc. ("Travel Sentry") has moved for summary judgment as to Count II of its Complaint, and each counterclaim, on the grounds that it does not infringe any claim of defendant David A. Tropp's ("Tropp") United States Patent Numbers 7,021,537 (the "'537 Patent") or 7,036,728 (the "'728 Patent") (collectively, the "Patents"). Travel Sentry argues that it does not perform any of the steps of the claims in the Patents and that no other single person or entity performs each of the steps of any of the claims of the Patents. Travel Sentry further argues that it does not directly control any actions performed by other parties involved in the accused process, nor do the entities involved form a joint enterprise.

Travel Sentry based its motion primarily on *BMC, Inc. v. Paymentech*, 498 F.3d 1373 (Fed. Cir. 2007) and *Muniauction, Inc. v. Thompson Corp.*, 532 F.3d 1318 (Fed. Cir. 2008). This Court granted summary judgment on the issue of noninfringement and Tropp appealed to the United States Court of Appeals for the Federal Circuit. During the pendency of the appeal, the Federal Circuit ruled *en banc* in *Akamai Tech., Inc. v. Limelight*, 692 F.3d 1301 (Fed. Cir. 2012) that while *Akamai* was not entitled to prevail on its theory of direct infringement, the evidence could support a judgment in its favor on a theory of induced infringement under the new test for indirect infringement enumerated by the Court in that case. Subsequently, the Federal Circuit reversed and remanded *Tropp's* appeal on the exact same grounds. *Travel Sentry v. Tropp*, 497 F. App'x 958 (Fed. Cir. Nov. 5, 2012). Meanwhile, in the *Akamai* case, Limelight appealed to the U.S. Supreme Court, who reversed the Federal Circuit in its new interpretation of the law of inducement and remanded for further proceedings. *Limelight Networks, Inc. v, Akamai Tech., Inc.*, 134 S. Ct. 2111 (2014).

On August 13, 2015, the Federal Circuit ruled in the *Akamai* case on remand from the U.S. Supreme Court (after vacating the panel's decision after remand). *Akamai Tech., Inc. v.*

Limelight Networks, Inc., 797 F.3d 1020 (Fed. Cir. Aug. 13, 2015) (en banc) (per curium) ("Akamai III"). In this ruling, the Federal Circuit overturned the panel's decision finding noninfringement, and at the invitation of the Supreme Court, See *Limelight*, 134 S. Ct. at 2111, 2119, 2120, modified the definition of direct infringement under section 271(a) of Title 35 of the U.S. Code (35 U.S.C.A. § 271(a)) where more than one actor is involved in an alleged direct infringement of a method patent. The Court found that an entity is responsible for others' performance of method steps in two sets of circumstances: (1) a more expansive definition of where the entity directs or controls the others' performance; and (2) where the actors form a joint enterprise. *Id.* at *3. In setting this new test, the Court overruled *Golden Hour Data Systems, Inc. v. EMS Charts, Inc*, 614 F.3d 1367 (Fed. Cir. 2010), and reversed the finding of noninfringement which had been based on the teachings of *BMC* and *Muniauction*.

Tropp files this cross-motion for summary judgment based on this new ruling of the Federal Circuit. Under the new test for joint infringement, not only must Travel Sentry's motion for summary judgment of noninfringement be denied but summary judgment of infringement by Travel Sentry should be granted. Travel Sentry directly infringes the claims of the Patents itself and through its licensed manufacturers, distributors and through the Transportation Security Administration ("TSA") who conducts the last steps of the patented methods. Travel Sentry directs and controls other entities' performance under the new expanded test of "direction and control", and Travel Sentry, the licensed manufacture and the TSA form a joint enterprise as defined by the Federal Court in its unanimous statement of the law of divided infringement.

II. FACTS

Tropp owns the two patents at issue in this case. These are the '537 Patent and the '728 Patent. Both are entitled "Method of Improving Airline Luggage Inspection". Both patents describe a method of airline luggage screening through the use of a special lock which enables a person to lock his or her luggage, while allowing the screening entity access to the luggage by use of a master key or keys without having to either "clip" the lock or break open the luggage. In the United States, the screening entity is the TSA. The TSA conducts the luggage screening at over 435 airports in the United States. The special locks are identified for TSA by a special identification symbol: for Tropp, the red-flame logo; for Travel Sentry, the red diamond.

Travel Sentry conducts a system which copies the method covered by the claims of the Patents. The "identification structure" which Travel Sentry uses is a red diamond logo. Travel Sentry holds a registered U.S. trademark on this red diamond logo. Therefore, no one can use this mark in the United States without Travel Sentry's permission. Travel Sentry then licenses lock manufacturers which allows them to place the red diamond logo on their locks, packaging, advertising and marketing materials. S-1.[1] Travel Sentry also licenses luggage manufacturers under the trademark which allows them to either include locks with the red diamond logo on them with the luggage, or to build in to the structure of the luggage the locks which also contain the red diamond logo on them. S-2. They likewise can use the Travel Sentry logo on their packaging, advertising and marketing material. Almost all of the lock manufacturers licensed by Travel Sentry are in China.

Travel Sentry further licenses distributors of locks in the United States which allows them to sell locks that have the red diamond logo to the public. S-3. The licensed lock manufacturers and luggage manufacturers can only sell to the licensed distributors. Likewise, the licensed distributors can only purchase from the licensed lock manufactures and the licensed luggage manufacturers. S-4. The Travel Sentry locks, and the Tropp locks, whose identification structure is the "red flame", have become known in the industry and by the public as "TSA locks". The TSA locks which Travel Sentry licenses are sold by the lock manufacturers and the luggage manufacturers to the distributors. The distributors then sell TSA locks which Travel Sentry licenses to the public. The purchasing public then uses the TSA locks for locking their luggage while traveling, particularly by air. S-5. In addition, Travel Sentry has entered into a Memorandum of Understanding ("MOU") with the TSA. This MOU is an agreement between the TSA and Travel Sentry whereby the TSA will utilize the Travel Sentry system by identifying the TSA Locks through the red diamond logo and open those locks for baggage inspecting using master keys provided by Travel Sentry, rather than "clipping" the lock or breaking open the luggage. The TSA actually promotes on its website that it employs such a system. It could not employ this system without the specific agreement with Travel Sentry. S-6.

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[1] The citations refer to the Statement of Material Facts Pursuant to Local Rule 56.1.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is warranted when the pleadings, depositions, answers to interrogatories, admissions, and affidavits reveal no genuine issue as to any material fact. *See* Fed. R. Civ. P. 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). All facts, inferences, and ambiguities must be viewed in a light most favorable to the non-moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 577 (1986). Initially, the burden is on the moving party to demonstrate the absence of a genuine issue of material fact through admissible evidence. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party satisfied this burden, the non-moving party must assert specific facts demonstrating there is a genuine issue to be decided at trial. *See* Fed. R. Civ. P. 56(e)(2); *Anderson*, 450 U.S. at 250.

To defeat summary judgment, the non-moving party must advance more than a "scintilla of evidence," *Anderson*, 477 U.S. at 252, and demonstrate more than "some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd.*, 475 U.S. at 586. The non-moving party "cannot defeat the motion by relying on the allegations in [its] pleading, or on conclusory statements, or on mere assertions that affidavits supporting the motion are not credible." *Gottlieb v. Cnty. of Orange*, 84 F.3d 511, 518 (2d Cir. 1996) (internal citation omitted).

Here, for the reasons set forth below, Defendant has conclusively stabled that Travel Sentry infringes on each and every step of the Patents and as such, there are no genuine issues of material fact and as such, Defendant is entitled to judgment as a matter of law. *Gilbert v. Gardner*, 480 F.3d 140, 145 (2d Cir. 2007)(quoting Fed. R. Civ. P. 56). Travel Sentry cannot come forthwith probative evidence that would create any triable issues of fact or any issues for this Court to decide.

IV. ARGUMENT

A. The Patents

Claim 1 of the '537 Patent is set forth as a representative claim for the other independent claims of the Patents. Travel Sentry seems to concede that if it infringes Claim 1, it infringes all the independent claims of the Patents, i.e. Claims 9, 14 and 18 of the '537 Patent and Claims 1 and 10 of the '728 Patent. See Memorandum of Law in Support of Motion for Summary Judgment of Non-infringement ("Memorandum") at 2-3, DKT 134.

Claim 1 of the '537 Patent states:

> "A method of improving airline luggage inspection by a luggage screening entity, comprising: making available to consumers a special lock having a combination lock portion and a master key lock portion, the master key lock portion for receiving a master key that can open the master key lock portion of this special lock, the special lock designed to be applied to an individual piece of airline luggage, the special lock also having an identification structure previously provided to the luggage screening entity, which special lock the luggage screening entity has agreed to process in accordance with a special procedure, marketing the special lock to the consumers in a manner that conveys to the consumers that the special lock will be subjected by the luggage screening entity to the special procedure, the identification structure signaling to a luggage screener of the luggage screening entity who is screening luggage that the luggage screening entity has agreed to subject the special lock associated with the identification

structure to the special procedure and that the luggage screening entity has a master key that opens the special lock, and the luggage screening entity acting pursuant to a prior agreement to look for the identification structure while screening luggage and, upon finding said identification structure on an individual piece of luggage, to use the master key previously provided to the luggage screening entity to, if necessary, open the individual piece of luggage."

This Court has issued its *Markman* Decision in this case where it construes the terms of the patents. DKT 127. The term "master key" in the '537 and '728 Patents is construed to be "a key, including electronic or other sensor mechanisms, that can open the master key lock portion or locking mechanisms of the special locks described in the Patent". *Markman* Decision at 8. *Id.* It is not limited to a "single" key nor must the locking mechanism be "dedicated". *Markman* Decision at 6 and 8 respectively. *Id.*

The term "identification structure" in the independent claims of the Patents is an indicia associated with the lock that signals to a luggage or baggage screener that the lock is subject to a special screening procedure. *Markman* Decision at 10-11. *Id.* The term "baggage screener" has been construed by the Court to be "a person who screens baggage", and the term "baggage screening entity" is an "entity that screens baggage". *Markman* Decision at 15. As stated, the words "baggage" and "luggage" are synonymous as used in the Patents. The term "screening" covers any and all screening occurring within the scope of air travel. *Markman* Decision at 15. *Id.* Likewise, the term "making available to consumers a special lock" has been construed by the Court as "causing the special lock to be available to consumers". *Markman* Decision at 18. *Id.*

The term prior agreement is "a prior arrangement` between the luggage screening entity (TSA) and another party (Travel Sentry) to process special locks in accordance with the special procedure." *Markman* Decision at 19. *Id.* The term special procedure is defined as "a procedure for processing special locks, as recited in the respective claims, in which the screening entity has agreed to act pursuant to a prior agreement to look for the identification structure while screening luggage, and, upon finding that identification structure on an individual piece of luggage, to use the master key previous provided to the screening entity to, if necessary, open the luggage". *Markman* Decision at 21. *Id.* Finally, the term marketing has been construed as the "selling or promoting the sale" of the special lock to consumers in a manner that conveys to them that the lock is subject to a special screening procedure. *Markman* Decision at 24. *Id.*

Travel Sentry and its licensed manufacturers and distributors directly infringe claim 1 of the '537 patent, and all the independent claims of the patents. Claim 1 of the '537 Patent discloses and teaches all aspects of Travel Sentry's locking system. The steps of claim 1 of the '537 Patent are literally met by Travel Sentry's locking system and therefore the Travel Sentry system literally infringes those claims. Travel Sentry through the other actions involved performs each and every step recited in claim 1 of the '537 Patent.

In breaking claim 1 down to its operative parts, it is comprised of essentially four steps, all of which Travel Sentry meets.

> **Step 1 –** "making available to consumers a special lock having a combination lock portion and a master key lock portion, the master key lock portion for receiving a master key that can open the master key lock portion of this special lock, the special lock designed to be applied to an individual piece of airline luggage, the special lock also having an identification structure associated therewith that matches an identification structure previously, provided to the luggage screening entity, which special lock the luggage screening entity has agreed to process in accordance with a special procedure."

Travel Sentry makes, and causes to be made, special locks available to consumers, namely those bearing Travel Sentry's red diamond logo. These locks (TSA locks) are manufactured and distributed only by agreement with and authorization by Travel Sentry. They cannot be made without the specific agreement and authorization of Travel Sentry (the license agreements). The Travel Sentry TSA locks have a combination lock portion and a master key lock portion. The master key portion receives a master key that can open the lock. The Travel

Sentry TSA locks are designed and promoted for use on airline luggage. The Travel Sentry red diamond logo is the identification structure that identifies the lock as a Travel Sentry TSA lock. Pursuant to a specific prior agreement between Travel Sentry and the Transportation Security Administration (TSA), (the MOU)[2], the TSA has agreed to process locks bearing the Travel Sentry diamond logo in accordance with the special procedure, described below. Specifically, the TSA will use the master keys provided by Travel Sentry to open the locks, which locks are also marked to identify which master key to use, rather than clip the lock or break open the baggage. The TSA could not do this without the MOU – the prior agreement – with Travel Sentry.

> **Step 2** – "marketing the special lock to the consumers in a manner that conveys to the consumers that the special lock will be subjected by the luggage screening entity to the special procedure,
>
> **Step 3** – the identification structure signaling to a luggage screener of the luggage screening entity who is screening luggage that the luggage screening entity has agreed to subject the special lock associated with the identification structure to the special procedure and that the luggage screening entity has a master key that opens the special lock,
>
> **Step 4** – and the luggage screening entity acting pursuant to a prior agreement to look for the identification structure while screening luggage and, upon finding said identification structure on an individual piece of luggage, to use the master key previously provided to the luggage screening entity to, if necessary, open the individual piece of luggage."

Travel Sentry markets Travel Sentry TSA locks and causes the TSA locks to be marketed to consumers in a manner that conveys to consumers that those locks will be subjected to a special screening procedure by the TSA (a luggage screening authority)-namely, that, if luggage must be opened for inspection during screening, the TSA will attempt to open such locks instead of clipping them. Again, Travel Sentry's red diamond logo (the identification structure) on a lock signals to TSA luggage screeners that the TSA has agreed to subject the lock to the special

[2] Attached as Exhibit 10 to the Declaration of Donald R. Dinan.

screening procedure, that the TSA has a master key, previously provided to it, that opens the lock, and that, pursuant to the prior agreement between Travel Sentry and the TSA (the MOU), the TSA is to use the master key to, if necessary, open the lock.

Travel Sentry admits that it "promotes" the system. Further, Travel Sentry's admitted activities read on the claim of the Patents as the term "marketing" has been construed by the Court in its *Markman* Decision. Travel Sentry's marketing materials are clearly aimed at making TSA locks available to consumers in a manner that conveys to the consumer that the lock will be subjected by the TSA to the special procedure. Travel Sentry's marketing materials and website identify and have portals where one can find the store closest to you where you can purchase Travel Sentry certified locks or baggage. S-7.

Travel Sentry's licensees infringe claim 1 of the '537 patent, and all the independent claims of the patents. Travel Sentry, and the manufacturer and distributer licensees through the license agreements with Travel Sentry, practice step 1 of claim 1 of the '537 Patent. They are "making available to consumers a special lock having a combination lock portion and master key portion". This is the Travel Sentry TSA lock. The master key lock portion receives a master key that can open the master key lock portion of this special lock. The special lock is designed to be applied to an individual piece of airline luggage. The special lock has an identification structure associated therewith and matches an identification structure previously provided to the luggage screening entity [TSA]. This is the Travel Sentry red diamond trademark. The lock manufacturers and luggage manufacturers make these TSA locks and include these TSA locks with, or embedded in, the luggage for this specific purchase. They mark the locks with the Travel Sentry red diamond logo. The distributors make these Travel Sentry TSA locks available to the consumers.

Travel Sentry and the manufacturing and distributor licensees also practice step 2 of claim 1 of the '537 Patent. They market the special lock to consumers in a manner that conveys that the special lock will be subjected by the luggage screening entity to a special procedure. All of the advertising goes exactly to this point. S-8. Step 2 also recites "the identification structure signaling to a luggage screener of the luggage screening entity who is screening luggage that the luggage screening entity has agreed to subject the special lock associated with the identification structure to the special procedure and that the luggage screening entity has a master key that opens the special lock." Again, this is the point and focus of all the advertisements to sell the Travel Sentry TSA locks. Id. S-9.

Steps 3 and 4 concern the TSA. Step 3 recites "the identification structure signaling to a luggage screener of the luggage screening entity [the TSA] who is screening luggage that the luggage screening entity has agreed to subject the special lock associated with the identification structure to the special procedure and that the luggage screening entity has a master key that opens the "special lock". Step 4 recites the "luggage screening entity [the TSA] acting pursuant to a prior agreement (the MOU) to look for the identification structure while screening luggage and, upon finding said identification structure on an individual piece of luggage, to use the master key previously provided to the luggage screening entity to, if necessary, open the individual piece of luggage." The master keys are made by the TSA lock manufacturer licensees and are provided to the TSA by Travel Sentry.

Travel Sentry has entered into the MOU with the TSA where the TSA specifically agrees to use the Travel Sentry system. S-10. The TSA itself advertises on its website that it uses this system in the way described above. S-11. The TSA has stated that it is "committed to making the Travel Sentry program run smoothly for all airline travelers." It states that it works with Travel

Sentry to solve problems and to "ensure any kinks in the system are ironed out." S-12. The Travel Sentry/TSA activity has been deemed an "unusual private sector collaboration." S-13. The TSA has claimed that its utilization of the Travel Sentry system, and the use of the TSA locks, has "give[n] passengers some peace of mind." S-13. TSA clearly performs the screening activities covered by steps 3 and 4 of claim 1 of the '537 Patent as the luggage screening entity.

The exact same analysis can be done for the other independent claims of the '537 and '728 Patents which would clearly show infringement of all the independent claims. Claim charts for each of the Patents are attached. The attached claim charts show specifically how each of these actions infringe every element of claim 1.

There can be no question that Travel Sentry, the licensed manufacturers and the TSA, practice every step of the claimed method. The question then becomes does Travel Sentry direct and control the actions of the other entities under the new *Akamai III* test, or do the entities form a joint enterprise.

B. The Travel Sentry License Agreements

Travel Sentry licenses lock manufacturers and luggage manufacturers and allows these manufactures to make the TSA lock. There are approximately 15 lock manufacturers and 15 luggage manufacturers under license to Travel Sentry. S-14. Travel Sentry also licenses distributors that allows them to sell the TSA locks. S-15. The way that the Travel Sentry controls all these entities is through the licensing of its trademark, the red diamond, which is the "identification structure" covered by the claims of the patents that the TSA recognizes and has agreed to process in accordance with a special procedure. Travel Sentry exerts almost total control over the licensed use of its trademarks. Lock manufacturers pay a flat initial fee to use the trademark. They also pay an up front fee per lock type to pay for the keys which are to be given to TSA to operate the TSA locks. Further, they pay a per lock royalty. Thus, the more locks they sell, the more money Travel Sentry makes. S-16.

Travel Sentry limits the products on which its trademark can be used. S-15. The Travel Sentry license is nonexclusive and non-transferable and licensees have no right to grant sub-licenses to third parties. Further, licensees cannot use a sub-manufacturer unless that sub-manufacturer also has a license from Travel Sentry. S-18.

Travel Sentry exerts complete control over quality and samples. The licensee has to submit to Travel Sentry at least once a year representative samples of each of the TSA locks with the associated packaging and promotional material for review and prior approval by Travel Sentry. A licensee is also bound to use such efforts to ensure that any reference to Travel Sentry products by resellers of Travel Sentry license products are the same as are approved by Travel Sentry. The licensee has to provide Travel Sentry on a quarterly basis all purchase orders, invoices and bills of lading which relate to Travel Sentry marked products purchased from the original manufacturers. The licensed products have to meet the standards set forth by Travel Sentry. Failure to meet these standards is cause for termination of the agreement. S-19.

Licensees have to make their guarantee policy available to Travel Sentry and allow Travel Sentry to post it on its web-site. Licensees have to carry liability insurance for the TSA locks. S-20. Travel Sentry even dictates where its marks are to be placed on the TSA locks and on the integrated or built-in locks in the luggage. Travel Sentry sets the graphic and trademark standards to be used with its trademark. S-21.

All advertising, promotional, and marketing materials of the licensees have to be approved by Travel Sentry. All of the licensees' comments about Travel Sentry have to be approved by Travel Sentry. Travel Sentry polices its standards to ensure the operational efficiency for the TSA and the quality of the locks. Travel Sentry polices its distributors' advertising. In fact, Travel Sentry makes a point that it has developed a system of quality locks, and enforces and polices that system and those standards. S-22.

The license agreement with the distributors gives the distributor the right to buy Travel Sentry approved locks from the manufacturers and to sell those locks subject to conditions in Exhibits B and C to the license agreements which set the graphics and trademark standards. Through these provisions, Travel Sentry can make sure the distributors "are saying the right things." S-23.

In the Manufacturer Trademark License Agreement ("MTLA"), the same types of controls exist, including the quality controls and samples. Travel Sentry has the right to inspect licensee's books, and requires quarterly reports on sales of the locks for the calculation of the royalty. S-24. Licensee has to provide Travel Sentry with future production estimates of the TSA locks. S-25. All promotional materials and packaging of the licensee also has to conform to the guidelines set by Travel Sentry. Product insurance must be carried. S-26. Furthermore, the license agreement is specific that Travel Sentry controls the assignment of passkeys and is solely responsible for the duplication, manufacture and distribution of these passkeys to the TSA. Travel Sentry gives the cylinder and passkey designs to the licensee for its use in its own locks. The number of cylinder and passkey designs that Travel Sentry gives to a licensee is completely controlled by Travel Sentry. S-27.

The passkey must be made of a material, specification and shape defined and produced under the control of Travel Sentry. Travel Sentry sets the number of unique keys per lock type. The passkey code is assigned by Travel Sentry and how and where it is embossed on the lock is set by Travel Sentry. Travel Sentry also completely controls the appearance, size, shape and located of the Travel Sentry logo (the "identification structure") right down to the "shade of red" (pantone 201). Travel Sentry mandates that the Travel Sentry logo be used on all packaging, labels, inserts, and promotions materials. S-28.

Travel Sentry maintains an interlocking web of license agreements. In addition to the MTLA for the lock manufacturers and the marketing license agreement for the distributors, Travel Sentry has devised a special license agreement for the luggage manufacturers who perform some of the roles of a manufacturer and a distributor. S-29. Travel Sentry even has a "Limited Distribution Letter of Agreement" for distributors to have a "trial period". This limited agreement not only places on the licensee the degree of controls found in the MTLA, but goes so far as to set the exact amount of locks the trial distributor can purchase per year. S-30.

Therefore, in total as concerns the use of the Travel Sentry trademark and the TSA lock, Travel Sentry exerts almost total of control over its licensees. It certainly directs and controls the activities of its licensees. The locks and all promotional and; packaging have to be approved by Travel Sentry, and the quality standards of the locks are set by Travel Sentry. Travel Sentry alone gives out the cylinder and passkey designs and limits what cylinders and passkey designs it will give to each licensee. The licensees cannot sell to anyone or even subcontract to anyone who is not itself a licensee.

C. The MOU

In the MOU, it is made clear that Travel Sentry will provide the TSA, at no cost, with 1,500 complete sets of passkeys for the TSA distribute to field locations. Passkeys are designed to permit TSA screeners to open checked baggage secured with Travel Sentry certified locks without breaking or "clipping" the locks. The TSA commits to make good faith efforts to distribute the passkeys and the information provided by Travel Sentry on the use of the passkeys and to use the passkeys and information provided by Travel Sentry on the use of the passkeys. S-31.

The TSA also agrees to accept the passkeys from Travel Sentry and to distribute them to all areas where checked baggage is performed. Travel Sentry coordinates the content of public announcements by TSA concerning the program. Travel Sentry provides the TSA with the training materials on lock recognition, use of the passkeys and on the ordering of replacement or additional sets of passkeys. Travel Sentry trains the TSA on how to perform the Travel Sentry System. Travel Sentry also works with the TSA to ensure distribution of all training materials. S-32.

Therefore, Travel Sentry has set up a system whereby the TSA agrees to use the Travel Sentry system and open the locks when bags are being screened. This is all denoted by the Travel Sentry trademark the identification structure which is the red diamond. Travel Sentry admits that the TSA uses the Travel Sentry System that the TSA procedures are based on the agreement (MOU) that Travel Sentry made with the TSA and that Travel Sentry needs the cooperation of the TSA to act according to the agreement to make the system work. S-33.

Travel Sentry provides the keys to the TSA, provides the replacement keys and provides training and training materials. Travel Sentry also ensures the distribution of the training materials and coordinates all public announcements concerning the use of the TSA locks with the TSA. Without the Travel Sentry identification mark, TSA could not act in the manner that it does as concerns the use of this mark. There would be no system for the TSA to follow. In all substantive aspects Travel Sentry directs and controls under the new test the activities of the TSA in performing steps 3 and 4 as concerns the travel screening entity, as covered by claim 1 of the ‘537 Patent.

D. The New Divided Infringement Test

Sitting *en banc*, the Federal Circuit unanimously set forth the law of divided infringement under section 271(a). Direct infringement occurs when all the steps of a claimed method are performed by or attributable to a single entity. *See BMC*, 498 F.3d at 1379-81. In applying the new alternative test of direct infringement when more than one entity is practicing the steps, the court must determine if the acts of one are attributable to the other and that a single entity is responsible for the infringement. As part of "direction and control", liability can also be found when the alleged infringer conditions participation in an activity, or the receipt of a benefit, upon performance of a step or steps, and establishes the manner or timing of that performance. *Cf. Metro-Goldwyn-Mayer Studios, Inc. v. Groukstar, Ltd.*, 545 U.S. 913, 930 (2005) (An entity "infringes vicariously by profiting from direct infringement" if that entity has the right and ability to stop or limit that infringement).

Travel Sentry falls exactly within the new *Akamai III* direction and control test. There is no question that it benefits immensely from the TSA performing the last two steps of the claimed method. There is likewise no question that the TSA greatly benefits from using the Travel Sentry method. Through the Travel Sentry method, as embodied in the MOU, the TSA must practice the final steps of the claimed method in order to receive the benefit. That is, it must use the specially marked keys to inspect the bags or the whole system does not work.

Travel Sentry conditions the use of and the participation in, the alleged infringing Travel Sentry method upon the TSA's performance of the final steps of the patented method by providing the keys, training manuals, and the training in the use of the system. Due to the high cost of production and training, the TSA has to use the keys and practice the last two steps of the method claim. Otherwise Travel Sentry would not provide the keys because of the high cost of production and training. If the TSA were not going to use the keys, there would be no incentive for Travel Sentry to provide the keys. Worse yet, if the traveling public, who, spend extra money, to purchase the TSA Travel Sentry's locks came to the conclusion that the TSA was not using the Travel Sentry system, they would not buy the locks. The licensed lock and luggage manufacturers would not pay the license fees to make the keys, nor include them in their luggage. This would put Travel Sentry out of business. Therefore, Travel Sentry has to, and does, condition the use of the Travel Sentry method on the TSA's using it and performing the final steps.

In *Akamai III*, with the facts very similar to this case, the Federal Circuit upheld the jury's verdict in favor of plaintiff patent holder, Akamai. There was substantial evidence that defendant infringer, Limelight, directed or controlled its customers' performance of each remaining step of the claimed method, such that all steps were attributable to Limelight. *Akamai*, 797 F.3d at 1024-25. First, if customers wished to use the Limelight product, they were obligated to engage in tagging and serving content, which was a step of Akamai's patented claimed methods. This obligation for a customer to engage in a patented step if it used the Limelight process proved that Limelight conditioned its customers' use on performance of this patented step. Second, Limelight provides instructions to customers on how to perform the method steps. Failure to follow Limelight's instructions would mean customers could not use the product. Limelight's engineers worked with customers on installation and on resolving problems. These instructions and assistance satisfied the requirement of Limelight establishing the manner and timing of its customers' performance.

In a recent decision issued after *Akamai III*, the District Court for the Southern District of Indiana, on remand from the Federal Circuit, found the defendant drug company liable for inducement of infringement. *Eli Lilly and Co. v. Teva Parenteral Medicines, Inc.*, 2015 WL

5032324, __ F. Supp. 3d __ (Aug. 25, 2015). The claims of the patent covered a method of administering a chemotherapy drug with vitamins (folic acid). The question was if the physicians who administered the drug directly infringed upon the patent, thus rendering the drug company *Teva* liable for inducement. The last steps of the claimed method required the patients to take the vitamins for a seven day period before the administration of the chemotherapy. The issue was whether the physicians directed or controlled the patients' administration of the folic acid. *Teva's* defense was that the patients obtained and took the drug on their own and that no one could control how or when the patients would take the drug or if they would take it at all. Id. at *4.

The court, relying entirely on the Federal Circuit's *Akamai* decision, found that the patients' administration of the drug to themselves could be attributed to the physicians. The physicians specified both the manner and timing in detail, including the exact dose, that had to be taken daily, and that these directions were in exact accordance with *Teva's* labeling. The court found that what was relevant under the new *Akamai* test was not whether the physicians "administered" the folic acid, but whether:

> "… the physician sufficiently directs or controls the acts of the patients in such a manner as to condition participation in an activity or receipt of a benefit in this case, treatment with pemetrexed in the manner that reduces toxicities-upon the performance of a step of the patented method and establishes the manner and timing of the performance…."

Id. at *5.

The Court, citing the Supreme Court in *Limelight*, 134 S. Ct. at 2117, noted that a court must assume that all steps of the asserted claims are being carried out. Thus, in this case, the Court must assume that the TSA is practicing the last steps of the asserted claim. *Id.* In *Eli Lilly*, the Court continued that the patient taking the vitamins is not merely a suggestion or a recommendation but a critical step in the patented method that has a specific purpose and direct impact on the outcome of the patented method. *Id.* Taking folic acid in the manner specified is a condition of the patients' participation in the chemotherapy treatment as described by the patent and is necessary in order to receive the benefit of such treatment. If the patient does not carry out the final step, he or she will not receive the benefit of this treatment (reducing the risk of potentially fatal toxicities). The physician, according to the patented method, directs the manner and timing of the patients' ingestion of the folic acid and the patient must do so in order to receive the full benefit of the treatment. *Id.*

Again, the situation is almost the same in the case at bar. The TSA must perform the last steps of the patented method in order to participate in the Travel Sentry method, otherwise Travel Sentry will not provide the keys and training and TSA will not receive the benefit, i.e. reduce theft, reduce claims, and satisfy public and political pressure for safe and secure luggage. Further, as the Court in *Eli Lilly* noted, a court cannot base a finding of non-infringement upon the mere possibility that some patients might not follow their physician's instructions. *Id.* Likewise, in this case, a finding of non-infringement cannot be made on the possibility that the TSA may not always follow the patented method. Rather the Court must look to the specific acts of Travel Sentry, including providing the keys and the training, and the MOU to determine if all the patented steps are followed, whether it would infringe the asserted claims. In this case, there can be no question that it does.

Therefore, under the new test of direction and control, set forth by the Federal Circuit in *Akamai III*, Travel Sentry directly infringes the asserted claims of the patented method.

Alternatively, the Federal Circuit stated, where two or more actors form a joint enterprise, all can be charged with the acts of the other, rendering each liable for the steps performed by the other as if each is a single actor. *Akamai III*, 797 F.3d at 1023.

A joint enterprise test requires proof of four elements:

(1) an agreement, express or implied, among the members of the group;

(2) a common purpose to be carried out by the group;
(3) a community of pecuniary interest in that purpose, among the members; and
(4) an equal right to a voice in the direction of the enterprise, which gives an equal right of control.

The Federal Circuit took this four part test from § 491 ("Joint Enterprise") of Restatement (Second) of Torts. A 'joint enterprise' is in the nature of a partnership, but is a broader and more inclusive term." Id. Comment (b). Comment (b) continues:

> A joint enterprise includes a partnership, but it also includes less formal arrangements for cooperation, for a more limited period of time and a more limited purpose. It includes an undertaking to carry out a small number of activities or objectives, or even a single one, entered into by members of the group under such circumstances that all have a voice in directing the conduct of the enterprise. The law then considers that each is the agent or servant of the others, and that the act of any one within the scope of the enterprise is to be charged vicariously against the rest.

Section 491 focuses on joint enterprise liability for automobile trips. In that context it explains the factor of equal right to a voice or equal right of control:

> In order that a joint enterprise may be found, there must be some additional factors which indicate such an equal voice, or equal right of control. If there is a common destination, a common purpose in the journey, a common pecuniary interest in that purpose, and the circumstances are such as to indicate a power to determine or change the route or the manner of driving by majority vote or by mutual agreement, the joint enterprise may be found, and the sharing of expenses is a factor of importance in leading to the conclusion. It is, in other words, a significant element taken together with others, but in itself is not controlling.

Section 491 was applied within this Circuit in *Estate of Antonio v. Pedersen*, Index No. 5:11.cv-41, 2012 WL 6163190 (D. Vt. Dec. 11, 2012). The plaintiff was the estate of a woman killed on a snowmobile tour of the Mount Snow ski area and alleged that the Mount Snow ski area was in a joint enterprise with the snowmobile company which had conducted the tour. The Mount Snow ski area moved for summary judgment, alleging, *inter alia*, that it did not have equal control over the snowmobile tours operated by the snowmobile company, and thus could not be held liable for the death. In denying summary judgment, the District Court explained that the fourth factor of the Restatement § 491(b) test, which requires an equal right to control, allowed delegation of control or responsibilities:

> Although "[t]he right of control is . . . essential[,] . . . management of the enterprise may be delegated to one or more of the joint venturers." 2-41 Matthew Bender, Business Organizations with Tax Planning § 41.05[1] (2012) (updated version of 2 Zolman Cavitch, Business Organizations (cited by Winey, 636 A.2d at 751)). Indeed, the majority of jurisdictions find that parties need not share control equally in a joint venture. See House v. Mine Safety Appliances Co., 573 F.2d 609, 620 (9th Cir. 1978) ("[C]ontrol need not be shared equally between members of a joint venture, but can be delegated to one member of the group."), overruled on other grounds by Warren v. U.S. Dep't of Interior Bureau of Land Mgmt., 724 F.2d 776 (9th Cir. 1984); Sturm v. United Servs. Auto Ass'n, 2012 WL 2135356, at *4 (N.D. Cal. June 12, 2012) (explaining that, while members of a joint venture must have joint control, they may delegate that control to one or more venturers); Halloran v. Ohlmeyer Comms. Co., 618 F. Supp. 1214, 1219 (S.D.N.Y. 1985) (holding "parties to a joint venture may choose to divide the responsibilities between themselves and defer . . . to each other's different areas of expertise."); Payton v. Abbott Labs, 512 F. Supp. 1031, 1036 (D. Mass. 1981) ("All that is required is that every party have some degree of input into the operation of the venture.").

Estate of Antonio at *10.

Although other states require a showing only of the majority of factors to establish a joint enterprise (*Geneva Pharm. Tech. Corp. v. Barr Labs Inc.*, 386 F.3d 485 (2d Cir. 2004) (applying New Jersey law), Vermont required a showing of all four factors. *Estate of Antonio* at *6. The above quoted explication satisfied the requirement of equal right to a voice giving an equal right of control.

As concerns Travel Sentry and its licensed manufacturers, there can be no question that they are a joint enterprise under this test. There are written agreements (the license agreements); a common purpose to be carried out by the group (sell and provide the locks and luggage); a community of pecuniary interest (make money in doing so and sufficing losses if the products do not sell); and an equal right to a voice in the direction of the enterprise, which gives each an equal right of control (the license agreements and arms-length contracts which are negotiated).

As concerns the TSA, the MOU internally refers to itself as an "Agreement." There is a common purpose carried out by the TSA and Travel Sentry to allow travelers to lock their luggage and have security from theft, while allowing access for the TSA to the contents of the luggage. The common purpose satisfies the security need of the TSA for access to luggage, and the goal of Travel Sentry and the luggage manufacturers to sell a luggage system that allows the TSA access without cutting locks or smashing open suitcases. This Travel Sentry system serves the common purpose of the TSA, Travel Sentry and luggage manufacturers to allow unimpeded security access to the TSA while sparing luggage from destruction. The TSA receives tens of thousands of claims a year for lost, stolen and broke luggage. In the last five years, the TSA paid $3,000,000 in damages for claims related to luggage. S-34.

There is a community of pecuniary purpose in the joint enterprise. If Travel Sentry succeeds in selling its system, it obviously obtains a pecuniary benefit from sales. Yet the TSA also benefits in a reduction of liability for broken locks and luggage. Travel Sentry provides passkeys "designed to permit TSA screeners to open checked luggage secured with Travel Sentry certified locks without breaking such locks." S-35. As to sharing losses, the TSA had to spend funds testing the Travel Sentry system, arranging to distribute the passkeys, providing information and training manuals to TSA screeners on how to use the Travel Sentry system, integrating the Travel Sentry system into the TSA property management system, MOU ¶4(b); and, coordinating in public announcements with Travel Sentry. S-36. Consequently, the use of the Travel Sentry system by the TSA involved a significant expenditure of time and effort, which translates to a significant expenditure of funds. If the Travel Sentry lock failed, both Travel Sentry and the TSA would suffer pecuniary losses. If the Travel Sentry lock system did not work as advertised, both Travel Sentry and the TSA would also share losses for destroyed locks and luggage, or for items stolen from luggage.

The negotiated MOU between Travel Sentry and the TSA meets the requirement for equal right to a voice in the direction of the enterprise, giving an equal right of control. There could have been no MOU unless both parties agreed to its terms. Either party has the right to terminate the MOU on thirty days' notice. S-37. This right provides a practical ability of each party to the MOU to have a voice of control or otherwise terminate the joint enterprise. Modifications of the MOU require mutual written consent. S-38. Travel Sentry provides instructions and necessary screening training manuals for the TSA to provide to its screeners, and both the TSA and Travel Sentry coordinate in public announcements. S-39. These provisions more than suffice to meet the fourth factor of the joint enterprise test. There is a common goal as a destination, a common purpose, a common pecuniary interest and a power to change by mutual agreement. That, by necessity, ultimate control over the TSA screeners is delegated to the TSA does not matter. *Estate of Antonio*, at *10. The TSA screeners are obligated to employ the Travel Sentry lock system as designed by Travel Sentry, otherwise the joint enterprise fails – the joint enterprise works only if both parties have a degree of input into that use of the Travel Sentry system by the TSA. Travel Sentry has the primary responsibility for use of its lock system and the TSA has primary responsibility for how its screeners operate but that division of responsibilities is perfectly consistent with an equal voice giving an equal right of control.

The joint enterprise of Travel Sentry and the TSA, with its common purpose, community of pecuniary interest, and equal right of voice and control, is further shown by the close interaction between the two entities. The TSA Management Directive of Operational and Technical Training specifically mandates that there be annual training by Travel Sentry on the use of the locks. S-40. The TSA has established the TSA Recognized Baggage Lock Program which has been in operation for 12 years to implement the Travel Sentry system. The TSA itself states that the program has been very successful benefiting both passengers and the TSA. The TSA Recognized Baggage Lock Program requires periodic training of transportation security officers ("TSOs") of the program to minimize cut locks or damaged bags. S-41. Travel Sentry provides the seven passkeys which are marked with both the Travel Sentry and TSA names and identifies, according to TSA standards, which type of lock a particular key opens. S-42.

Numerous articles have described how Travel Sentry and the TSA have collaborated in developing and implementing the Travel Sentry system. The TSA has announced that "All our screeners have been trained on these new locks." S-43. Mark Hatfield, now the Assistant Administrator of the TSA, has stated to the press that "We are committed to make the Travel Sentry program run smoothly for all airline travelers." Mr. Hatfield continued to say that when the TSA hears of a problem, it works with Travel Sentry to solve the problem. Travel Sentry collects information directly and shares it with the TSA for immediate action. S-44. The TSA advocates that travelers use the TSA recognized locking system (the Travel Sentry system). S-45. Travel Sentry and the TSA work so closely together that the TSA Travel Sentry luggage locks have been characterized as the "back door to the whole TSA security system." S-46.

The terms "TSA master keys" and "TSA Travel Sentry luggage locks" are used so interchangeably as to the two entities in describing the TSA's use of the Travel Sentry system that they have become identified with the TSA solely. The recent issue of the British magazine The Economist described how the TSA worked with manufacturers to create a special category of locks which could be opened by a master key. The Economist described the Travel Sentry indicia as "the TSA's red triangle imprimatur." S-47.

In a series of articles on the incident of computer hackers copying the Travel Sentry TSA keys, the close connection between Travel Sentry and the TSA is described. The locks are referred to as TSA luggage locks and TSA master keys. The system is described as "TSA's system". The articles describe how the TSA has a series of master keys which are used by TSA agents to open luggage. One article actually refers to the TSA master keys as "the keys in the Transportation Security Administration luggage kingdom". The keys are called "TSA-approved Travel Sentry luggage locks" and "TSA Travel Sentry master keys". What was originally considered the Travel Sentry system is now commonly referred to as the TSA's system. The official TSA blog describes how the TSA has worked with several companies developing locks that can be opened by security officers by using master keys, thus showing the very close cooperation between the TSA and Travel Sentry. These articles go to show how close the TSA works with Travel Sentry and how they all are indicia of the four part joint enterprise test. S-48.

V. CONCLUSION

For the reasons stated above, Defendant has proven the absence of any triable issue of fact and as such, Defendant's motion for summary judgment should be granted in its entirety. Likewise, Plaintiff's motion for summary judgment should be denied in its entirety.

Dated: New York, New York
October 23, 2015

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CLAIM CHART REGARDING U.S. Patent No. 7,021,537

USPN 7,021,537 Independent Claims	Elements of Representative Accused Products
Independent Claim 1:	
1. A method of improving airline luggage inspection by a luggage screening entity, comprising:	
making available to consumers a special lock having a combination lock portion and a master key lock portion, the master key lock portion for receiving a master key that can open the master key lock portion of this special lock, the special lock designed to be applied to an individual piece of airline luggage, the special lock also having an identification structure associated therewith that matches an identification structure previously provided to the luggage screening entity, which special lock the luggage screening entity has agreed to process in accordance with a special procedure,	• Respondents manufacture for importation and sale in the United States, locks, luggage and baggage containing such locks which especially adapted for use in Tropp's process and have a lock or combination lock portion and a master key lock portion. • Respondents' locks are designed to be applied to an individual piece of airline luggage. • Respondents' locks have an identification structure associated therewith that matches an identification structure previously provided to the luggage screening entity.
marketing the special lock to the consumers in a manner that conveys to the consumers that the special lock will be subjected by the luggage screening entity to the special procedure,	• Respondents market the special locks to consumers and/or supply the special locks to retailers who market the special locks to consumers who understand that the special lock will be subjected to the special procedure by the luggage screening entity, name the Transportation Security Administration (TSA).

USPN 7,021,537 Independent Claims	Elements of Representative Accused Products
the identification structure signaling to a luggage screener of the luggage screening entity who is screening luggage that the luggage screening entity has agreed to subject the special lock associated with the identification structure to the special procedure and that the luggage screening entity has a master key that opens the special lock, and	• The identification structure signals to the TSA that the special lock is subject to the special procedure and can be opened by a master key available to TSA.
the luggage screening entity acting pursuant to a prior agreement to look for the identification structure while screening luggage and, upon finding said identification structure on an individual piece of luggage, to use the master key previously provided to the luggage screening entity to, if necessary, open the individual piece of luggage.	• TSA upon seeing that the lock has an identification structure can then use the master key to open the individual piece of luggage for further inspection.
Independent Claim 9:	
9. A method of improving airline luggage inspection by a luggage screening entity, comprising:	
making available to consumers a special lock having a first lock portion and a master key lock portion, the master key lock portion for receiving a master key that can open the master key lock portion of this special lock, the special lock designed to be applied to an individual piece of airline luggage, the special lock also having an identification structure associated therewith that matches an identification structure previously provided to the luggage screening entity, which special lock the luggage screening entity has agreed to process in accordance with a special procedure,	• Respondents manufacture for importation and sale in the United States, locks, luggage and baggage containing such locks which especially adapted for use in Tropp's process and have a lock or combination lock portion and a master key lock portion. • Respondents' locks are designed to be applied to an individual piece of airline luggage. • Respondents' locks have an identification structure associated therewith that matches an identification structure previously provided to the luggage screening

USPN 7,021,537 Independent Claims	Elements of Representative Accused Products
	entity.
marketing the special lock to the consumers in a manner that conveys to the consumers that the special lock will be subjected by the luggage screening entity to the special procedure,	• Respondents market the special locks to consumers and/or supply the special locks to retailers who market the special locks to consumers who understand that the special lock will be subjected to the special procedure by the luggage screening entity, name the Transportation Security Administration (TSA).
the identification structure signaling to a luggage screener of the luggage screening entity who is screening luggage that the luggage screening entity has agreed to subject the special lock associated with the identification structure to the special procedure and that the luggage screening entity has a master key that opens the special lock, and	• The identification structure signals to the TSA that the special lock can be opened by a master key available to TSA.
the luggage screening entity acting pursuant to a prior agreement to look for the identification structure while screening luggage and, upon finding said identification structure on an individual piece of luggage, to use the master key previously provided to the luggage screening entity to, if necessary, open the individual piece of luggage.	• TSA upon seeing that the lock has an identification structure can then use the master key to open the individual piece of luggage for further inspection.
Independent Claim 14:	
14. A method of improving airline luggage inspection by a luggage screening entity, comprising:	
making available to consumers a special lock having a combination lock portion and a master key lock portion, the master key lock portion for receiving a master key that cart open the master key lock portion of this special lock, the special lock	• Respondents manufacture for importation and sale in the United States, locks, luggage and baggage containing such locks which especially adapted for use in Tropp's process and have a lock or combination lock portion and a master

USPN 7,021,537 Independent Claims	Elements of Representative Accused Products
designed to be applied to an individual piece of airline luggage, the special lock also having an identification structure associated therewith that corresponds with a corresponding identification structure previously provided to the luggage screening entity, which special lock the luggage screening entity has agreed to process in accordance with a special procedure,	key lock portion. • Respondents' locks are designed to be applied to an individual piece of airline luggage. • Respondents' locks have an identification structure associated therewith that corresponds with an identification structure previously provided to the luggage screening entity.
marketing the special lock to the consumers in a manner that conveys to the consumers that the special lock will be subjected by the luggage screening entity to the special procedure,	• Respondents market the special locks to consumers and/or supply the special locks to retailers who market the special locks to consumers who understand that the special lock will be subjected to the special procedure by the luggage screening entity, name the Transportation Security Administration (TSA).
he identification structure signaling to a luggage screener of the luggage screening entity who is screening luggage that the luggage screening entity has agreed to subject the special lock associated with the identification structure to the special procedure and that the luggage screening entity has a master key that opens the special lock, and	• The identification structure signals to the TSA that the special lock can be opened by a master key available to TSA.
the luggage screening entity acting pursuant to a prior agreement to look for the corresponding identification structure while screening luggage and, upon finding said corresponding identification structure on an individual piece of luggage, to use the master key previously provided to the luggage screening entity to, if necessary, open the individual piece of luggage.	• TSA upon seeing that the lock has an identification structure can then use the master key to open the individual piece of luggage for further inspection.

USPN 7,021,537 Independent Claims	Elements of Representative Accused Products
Independent Claim 18:	
18. A method of improving airline luggage inspection by a luggage screening entity, comprising:	
making available to consumers a special lock having a first lock portion and a master key lock portion, the master key lock portion for receiving a master key that can open the master key lock portion of this special lock, the special lock designed to be applied to an individual piece of airline luggage, the special lock also having an identification structure associated therewith that corresponds with a corresponding identification structure previously provided to the luggage screening entity, which special lock the luggage screening entity has agreed to process in accordance with a special procedure,	• Respondents manufacture for importation and sale in the United States, locks, luggage and baggage containing such locks which especially adapted for use in Tropp's process and have a lock or combination lock portion and a master key lock portion. • Respondents' locks are designed to be applied to an individual piece of airline luggage. • Respondents' locks have an identification structure associated therewith that corresponds with an identification structure previously provided to the luggage screening entity.
marketing the special lock to the consumers in a manner that conveys to the consumers that the special lock will be subjected by the luggage screening entity to the special procedure,	• Respondents market the special locks to consumers and/or supply the special locks to retailers who market the special locks to consumers who understand that the special lock will be subjected to the special procedure by the luggage screening entity, name the Transportation Security Administration (TSA).
the identification structure signaling to a luggage screener of the luggage screening entity who is screening luggage that the luggage screening entity has agreed to subject the special lock associated with the identification structure to the special procedure and that the luggage screening entity has a master key	• The identification structure signals to the TSA that the special lock can be opened by a master key available to TSA.

USPN 7,021,537 Independent Claims	Elements of Representative Accused Products
that opens the special lock, and	
the luggage screening entity acting pursuant to a prior agreement to look for the corresponding identification structure while screening luggage and, upon finding said corresponding identification structure on an individual piece of luggage, to use the master key previously provided to the luggage screening entity to, if necessary, open the individual piece of luggage.	• TSA upon seeing that the lock has an identification structure can then use the master key to open the individual piece of luggage for further inspection.

CLAIMS CHART RE U.S. Patent No. 7,036,728

Independent Claims in USPN 7,036,728	Elements of Representative Accused Products
Independent Claim 1:	
1. A method of improving carrier baggage inspection by a baggage screening entity, comprising:	
making available to consumers a special lock, having a combination lock portion and having a master key lock portion, the master key lock portion for receiving a master key that can open the master key lock portion of this special lock, the special lock designed to be applied to an individual piece of carrier baggage, the special lock also having an identification structure associated therewith that matches a corresponding identification structure previously provided to the baggage screening entity, which special lock the baggage screening entity has agreed to process in accordance with a special procedure,	• Respondents manufacture for importation and sale in the United States, locks, luggage and baggage containing such locks which are especially adapted for use in Tropp's process and have a lock or combination lock portion and a master key lock portion. • Respondents' locks are designed to be applied to an individual piece of carrier baggage. • The locks are actually applied to baggage by the consumers that buy the baggage and locks. • Respondents' locks have an identification structure associated therewith that matches an identification structure previously provided to the baggage screening entity.
marketing the special lock to the consumers in a manner that conveys to the consumers that the special lock will be subjected by the baggage screening entity to the special procedure,	• Respondents market the special locks to consumers and/or supply the special locks to retailers who market the special locks to consumers who understand that the special lock will be subjected to the special procedure by the baggage screening entity, name the Transportation Security Administration

Independent Claims in USPN 7,036,728	Elements of Representative Accused Products
	(TSA).
the identification structure signaling to a baggage screener of the baggage screening entity that the baggage screening entity has agreed to subject the special lock associated with the identification structure to the special procedure, and	• The identification structure signals to the TSA that the special lock can be opened by a master key available to TSA.
the baggage screening entity acting pursuant to a prior agreement to look for the identification structure while screening baggage and, upon finding said identification structure on an individual piece of baggage, to use the special procedure previously agreed to by the baggage screening entity to, if necessary, open the individual piece of baggage.	• TSA upon seeing that the lock has an identification structure can then use the master key to open the individual piece of baggage for further inspection.
Independent Claim 10:	
10. A method of improving carrier baggage inspection by a baggage screening entity comprising:	
making available to consumers a special lock, having a first lock portion and a master key lock portion, the master key lock portion for receiving a master key that can open the master key lock portion of this special lock, the special lock designed to be applied to an individual piece of carrier baggage, the special lock also having an identification structure associated therewith that matches a corresponding identification structure previously provided to the baggage screening entity which special	• Respondents manufacture for importation and sale in the United States, locks, luggage and baggage containing such locks which especially adapted for use in Tropp's process and have a lock or combination lock portion and a master key lock portion. • Respondents' locks are designed to be applied to an individual piece of carrier baggage.

Independent Claims in USPN 7,036,728	Elements of Representative Accused Products
lock the baggage screening entity has agreed to process in accordance with a special procedure,	• Respondents' locks have an identification structure associated therewith that matches an identification structure previously provided to the baggage screening entity.
marketing the special lock to the consumers in a manner that conveys to the consumers that the special lock will be subjected by the baggage screening entity to the special procedure,	• Respondents market the special locks to consumers and/or supply the special locks to retailers who market the special locks to consumers who understand that the special lock will be subjected to the special procedure by the baggage screening entity, name the Transportation Security Administration (TSA).
the identification structure signaling to a baggage screener of the baggage screening entity that the baggage screening entity has agreed to subject the special lock associated with the identification structure to the special procedure, and	• The identification structure signals to the TSA that the special lock can be opened by a master key available to TSA.
the baggage screening entity acting pursuant to a prior agreement to look for the identification structure while screening baggage and, upon finding said identification structure on an individual piece of baggage, to use the special procedure previously agreed to by the baggage screening entity to, if necessary, open the individual piece of baggage.	• TSA upon seeing that the lock has an identification structure can then use the master key to open the individual piece of baggage for further inspection.